

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE EX REL., KRISTON PRICE, :
Relator, :
v. : No. 113175
JUDGE ROBERT BERGER, :
Respondent. :

JOURNAL ENTRY AND OPINION

JUDGMENT: COMPLAINT DISMISSED
DATED: December 20, 2023

Writ of Procedendo
Motion No. 569675
Order No. 570025

Appearances:

Kriston Price, *pro se.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Matthew T. Fitzsimmons, IV, Assistant Prosecuting Attorney, *for respondent.*

ANITA LASTER MAYS, A.J.:

{¶ 1} Kriston Price, the relator, has filed a complaint for a writ of procedendo. Price seeks a writ of procedendo to compel Judge Robert Berger, the respondent, to render rulings with regard to motions that are pending in Cuyahoga

County Juvenile Court J.C. No. FA-21-100501. Price argues that Judge Berger has failed to rule on a motion for shared parenting, motion for visitation, and a motion to modify child support. Judge Berger has filed a motion to dismiss arguing that Price's request for procedendo is moot. This court grants Judge Berger's motion to dismiss.

Standards for Procedendo

{¶ 2} In order for this court to grant a writ of procedendo, Price must demonstrate a clear legal right to require a court to proceed, a clear legal duty on the part of the court to proceed, and a lack of an adequate remedy in the ordinary course of the law. *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 72 Ohio St.3d 461, 650 N.E.2d 899 (1995); *State ex rel. Knox v. Russo*, 8th Dist. Cuyahoga Nos. 102589 and 103003, 2015-Ohio-3773. A writ of procedendo is appropriate when a court has refused to enter judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Brown v. Logan*, 138 Ohio St.3d 286, 2014-Ohio-769, 6 N.E.3d 42; *State ex rel. Crandall, Pheils & Wisniewski v. DeCessna*, 73 Ohio St.3d 180, 652 N.E.2d 742 (1995).

Legal Analysis

{¶ 3} Attached to Judge Berger's motion to dismiss is a copy of a judgment entry, journalized November 1, 2023, that demonstrates Price was granted temporary visitation with his minor child via Zoom. The request for a writ of procedendo, in order to require Judge Berger to render a ruling with regard to the motion for visitation, is moot. *State ex rel. Pettway v. Cuyahoga Cty. Court of*

Common Pleas, 8th Dist. Cuyahoga No. 98699, 2012-Ohio-5423. The judgment entry also provided that the motions to modify child support and shared parenting would be heard at a pretrial hearing scheduled for November 17, 2023. The Ohio Supreme Court has held that setting a matter for hearing renders an action for a writ of procedendo moot. *State ex rel. Rohrer v. Holzapfel*, 149 Ohio St.3d 132, 2016-Ohio-7827, 73 N.E.3d 482; *State ex rel. S.Y.C. v. Floyd*, 8th Dist. Cuyahoga No. 106955, 2018-Ohio-2743.

Conclusion

{¶ 4} Accordingly, we grant Judge Berger’s motion to dismiss. Costs to Price; costs waived. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶ 5} Complaint dismissed.

A handwritten signature in cursive script, appearing to read "Anita Laster Mays", written over a horizontal line.

ANITA LASTER MAYS, ADMINISTRATIVE JUDGE

EMANUELLA D. GROVES, J., and
MARY J. BOYLE, J., CONCUR